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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1254-2016 [O&M]

Date of Decision : March 29th, 2016

Balbir and others

.... Appellants

Versus

Govt. High School (Senior Secondary School)
TH its Member and others

.. Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

Present Mr. Surinder Gandhi, Advocate,
for the appellants.

SHEKHER DHAWAN, J.

Present Regular Second Appeal is directed against the concurrent findings of both the Courts below, whereby, the suit for permanent injunction filed by the plaintiffs-respondents was decreed by the Court of first Instance vide judgment and decree dated 21.02.2011. The appeal filed by appellant-defendants was dismissed by learned Additional District Judge, Hoshiarpur vide judgment and decree dated 15.02.2016.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

3. Relevant facts of the case for the purpose of decision of this appeal; that plaintiffs – Government High School (Senior Secondary School) Salempur and two others filed suit for permanent injunction restraining the defendants from interfering in the possession of suit property in land measuring 1 kanal-15 marlas comprised in Khasra No.124,

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Khewat No.1603, Khatoni No.1753, situated at Village Salempur, Tehsil Dasuya, District Hoshiarpur. The suit property is owned by plaintiffs as per the revenue records. The said property is shown to be 'Mushtarka Malkan' 'Digar Hakdaran' and the same is in possession of Senior Secondary School Salempur. The students of said school used to play on the suit property and defendants have no right, title or interest in the suit property but were threatening to interfere in the possession of the plaintiff.

4. Defendants contested the suit, *inter alia*, taking the plea that defendants along with the other non-proprietors are in possession of the suit property. The Sarpanch and other members of the village, who were inimical to plaintiffs, tried to dispossess the plaintiffs from the suit property and suit for permanent injunction filed by plaintiffs is without any merit and the same is liable to be dismissed.

5. On these pleadings of the parties, the Court of first instance settled the issues. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, the Court of first instance returned findings that plaintiffs have been able to prove that suit property is owned by the plaintiffs and is in possession of the plaintiff-Government High School (Senior Secondary School) Salempur and defendants failed to rebut the same and the Court below decreed the suit of the plaintiffs.

6. Defendants preferred an appeal before the Court of first Appeal and first Appellate Court dismissed the same. As such, the present Regular Second Appeal.

7. Learned counsel for the appellants while assailing the findings having been recorded by both the Courts below, submitted that appellants

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are in possession of the suit property since the year 1962-63 for storing their manure. As per provisions of Section 44 of the Punjab Land Revenue Act (hereinafter referred to as 'the act'), Jamabandis being record of right has got presumption of truth and correctness attached to the same. If there is any change in the revenue record without issuance of any notice to the party concerned, the said change is without any effect. In the present case also the subsequent revenue entries recorded in the revenue record are liable to be set aside.

8. Learned counsel for appellants further submitted that first Appellate Court dismissed the application for additional evidence and the order dated 15.02.2016 passed by Additional District Judge, Hoshiarpur is not sustainable in the eyes of law and appeal be accepted and the judgment and decree passed by both the Courts below be set aside.

9. Having considered the submissions made by learned counsel for the appellants, this Court is of the considered view that both the Courts below have already appreciated the entire oral and documentary evidence and recorded concurrent findings of fact that in fact plaintiff-Government High School (Senior Secondary School) Salempur is the owner in possession of the suit property as per latest revenue record i.e. Jamabandi right from the year 1982-83. Government High School (Senior Secondary School) Salempur is in possession of the suit property. The said entries have not been challenged and there is no document available on the file showing the possession of the present appellants. The Courts below while deciding application under Order 41 Rule 27 CPC rightly observed that if appellants were aggrieved of correction in the revenue record, the appropriate remedy available with the appellants was to challenge the

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same before the competent authority for correction of the record but that has not been done.

10. At any rate on the basis of oral evidence adduced by the plaintiffs and revenue record which includes Jamabandi for the year 1982-83, the plaintiffs are in possession of the suit property and the Courts below have rightly recorded the concurrent findings of facts and the order passed by Courts below do not call for any interference.

11. As per view taken by Hon'ble Supreme Court in Deity **Pattabhiramaswamy Vs. S. Hanymayya and others, AIR 1959 SC 57,** the provisions of Section 100 CPC are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground of erroneous findings of fact. As per view taken by Hon'ble Supreme Court in **Commissioner Hindu Religious & Charitable Endowment Vs. P. Shanmugama & Ors., JT 2005(1) SC 201** and **Biswanath Ghosh [Dead] by LRs and Ors. Vs. Gobinda Ghosh alias Gobindha Chandra Ghosh & Ors. AIR 2014 SC 1582,** second appeal cannot be entertained if there is no substantial question of law involved therein.

12. In the present appeal, there is no substantial question of law involved, rather both the Courts below have already appreciated the entire evidence. Hence, the present appeal is not maintainable as per provisions of Section 100 of the Code of Civil Procedure, 1908.

13. In view of the above, the present Regular Second Appeal stands dismissed.

(SHEKHER DHAWAN)
JUDGE

March 29th, 2016
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